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MOHAMAD HABIZAN MOHAMAD YUSSOF v. PRUDENTIAL BSN TAKAFUL BHD

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[CIVIL SUIT NO: WA-22NCC-305-06-2022]
7 AUGUST 2025

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Abstract – *(i) The inclusion of a document in Part A of a common bundle of documents does not prevent a party from challenging the validity of such a document (ii) An insurance certificate can be voided ab initio if the proposer makes material misrepresentations in the proposal form. The materiality of a misrepresentation is determined by its significance to the insurance operator's risk assessment. Misrepresenting income and business status, which are central to assessing risk, constitutes a material breach of the duty of utmost good faith.*

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INSURANCE: *Claims – Misrepresentation – Claim for benefits under certificate issued by insurer upon death of deceased – Claim declined by insurer – Whether there were misrepresentations and/or non-disclosure of material facts by deceased in proposal form – Whether inclusion of certificate in Part A of common bundle of documents precluded insurer from challenging validity – Whether insurer failed to investigate/verify deceased's information before issuing certificate – Whether insurer entitled to avoid certificate ab initio and refuse all claims – Islamic Financial Services Act 2013, para. 15(1) of sch. 9*

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CIVIL PROCEDURE: *Documents – Common bundle of documents – Whether inclusion of documents in Part A of common bundle of documents precludes challenge of validity*

The deceased had applied for takaful coverage from the defendant through a proposal form. Based on the information provided in the proposal form, the defendant issued a certificate. The certificate provided for death benefit of RM1.5 million, with an additional RM1.5 million payable in the event of accidental death. The plaintiff was named as the nominee/beneficiary under the said certificate. Merely 20 days after the issuance of the certificate, the deceased passed away after falling from the 17th floor of a building where he resided. The post-mortem report revealed the presence of alcohol and a prescription drug called chloroquine in the deceased's system. Following the demise of the deceased, the plaintiff, as nominee, made a claim under the certificate for a total of RM3 million, comprising both the death and accidental death benefits. The defendant paid the plaintiff a sum of RM3,113.51 as khairat benefit. The defendant, however, declined the plaintiff's claim, asserting that the certificate was void *ab initio* due to misrepresentations and/or non-disclosure of material facts by the deceased in the proposal form, namely: (i) his annual income, which he claimed was

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RM450,000; (ii) his employment status and company declaring he was self-employed under 'Nesh Electrician'; (iii) the source of the takaful contribution payment, which came from the plaintiff's account rather than the deceased's account as declared; and (iv) his consumption of alcohol, which he denied in the proposal form. Alternatively, the defendant argued that even if the certificate was valid, the claim for accidental benefit was excluded under cls. 2.4.1(f), 2.4.1(h) and/or 2.4.1(c) of the certificate due to: (i) the presence of chloroquine in the deceased's system without evidence of a doctor's prescription; (ii) the presence of alcohol in the deceased's blood; and/or (iii) circumstances suggesting the death may have been self-inflicted or resulted from reckless exposure to danger. Further, the defendant submitted that the plaintiff failed to provide additional documents requested under cl. 12.7.1 of the certificate, which was a prerequisite for claim assessment. Hence, the present claim by the plaintiff. It was contended by the plaintiff that: (i) the certificate was marked under Part A of the common bundle of documents, which meant its authenticity and contents were admitted and could not be challenged; (ii) the defendant's underwriter had seen and approved the RM450,000 annual income despite finding it questionable; (ii) 'Nesh Electrician' existed as an unregistered business; (iii) the payment from the plaintiff's account was initiated by the deceased who had temporary control over it due to technical difficulties with his own bank; (iv) there was no evidence of alcohol consumption at the time of application and the deceased had shown honesty by asking whether he needed to declare being an ex-smoker; (v) the police and medical evidence clearly established accidental death and the defendant failed to produce any expert testimony to contradict this finding; and (vi) the requirements to provide additional documents after the claim was lodged were unreasonable and should have been requested at the application stage.

Held (dismissing claim):

(1a) While the certificate's existence and contents were not in dispute, its enforceability remained a triable issue. The defendant was not precluded from challenging the certificate's validity on grounds of misrepresentation or non-disclosure of material facts. To accept the plaintiff's argument would lead to an absurd result whereby a party could shield a legally defective contract from judicial scrutiny merely by agreeing to include it in Part A. This would undermine the court's fundamental role in determining substantive legal rights and obligations according to established principles of law. (paras 33 & 34)

(2) While takaful operators have obligations of good faith, these do not extend to an obligation to independently verify all information provided by proposers. The law places the primary duty of disclosure on the proposer, who possesses exclusive knowledge of their personal circumstances. The defendant was entitled to rely on the deceased's declarations in the proposal form and had no legal obligation to verify

these declarations before issuing the certificate. The defendant's subsequent discovery of misrepresentations after the deceased's passing did not constitute a breach of the duty of good faith on their part. (paras 39 & 43)

(3a) The plaintiff failed to produce any documentary evidence – such as bank statements, payment vouchers, business records or client contracts – that might substantiate the deceased's claimed income, despite having ample opportunity to do so during trial. This was particularly significant because the plaintiff claimed to have worked closely with the deceased in business. The discrepancy between the declared income of RM450,000 and the deceased's actual financial circumstances was further underscored by evidence that he resided in a low-cost flat prior to his death, which would be incongruous with such a substantial income. (paras 49 & 50)

(3b) The deceased's declaration of an annual income of RM450,000 was a clear and material misrepresentation of fact in the proposal form. The magnitude of this misrepresentation, *ie*, declaring an income several times higher than his actual earnings, and its centrality to the takaful operator's risk assessment made it particularly significant. (para 54)

(3c) The deceased misrepresented his occupation and company in the proposal form. While he may have occasionally performed electrical works, the evidence did not support the existence of 'Nesh Electrician' as a functioning business entity as represented to the defendant. The plaintiff, who claimed to have worked with the deceased in this purported business, had conspicuously failed to produce any documentary evidence of its existence. (paras 59 & 64)

(3d) Although the defendant did not establish all elements of its defence, the two material misrepresentations regarding annual income and business entity were sufficient grounds to void the certificate *ab initio*. They duty of utmost good faith was fundamental to takaful contracts and the deceased's misrepresentations on these two material points constituted a breach of this duty. (para 133)

(4) The contemporaneous documentary evidence showed that the contribution payment came from the plaintiff's bank account. It was also important to note that only one premium payment was made before the deceased's untimely passing, merely 20 days after the certificate was issued. The plaintiff had provided a plausible explanation that the deceased encountered technical difficulties with his own payment method, as evidenced in the WhatsApp conversations, which showed system errors when attempting payment. The deceased then resorted to using the plaintiff's account as a one-time solution to his technical problem. (paras 66 & 67)

(5) In the insurance context, the question 'Do you consume alcohol?' typically aims at understanding lifestyle habits that may affect risk assessment, not isolated incidents. The evidence only established that the deceased had alcohol in his system at the time of his death and that he may have consumed alcohol on at least one occasion. This did not necessarily contradict his answer in the proposal form if the question was understood to inquire about regular or habitual consumption. Given the linguistic ambiguities and the lack of conclusive evidence about the deceased's alcohol consumption habits at the time of the proposal, it could not be found, with sufficient certainty that the deceased misrepresentation his alcohol consumption in the proposal form. (paras 71-73)

(6) As the deceased had made deliberate or reckless misrepresentations of material facts, the defendant was entitled to avoid the certificate and refuse all claims, pursuant to para. 15(1) of Sch. 9 of the Islamic Financial Services Act 2013 ('IFSA'). This conclusion was consistent with the certificate's own terms. Clause 12.1.4 of the certificate stated that 'In the event of a misrepresentation where your certificate has been in force for a period of two certificate years or less it shall be handled in accordance with Schedule 9 of the IFSA whereby it may result in any of the following: (a) Your certificate being avoided and all claims refused …'. When read together with cls. 12.8.2 and 12.8.3, which addressed misstatement and misrepresentation of information, these provisions clearly allowed for the avoidance of the certificate. (paras 84 & 85)

Case(s) referred to:

Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors [1993] CLJU 103; [1993] 1 LNS 103 HC ***(refd)***

Great Eastern Life Assurance (Malaysia) Bhd v. Poobalan Rajah [2019] 10 CLJ 353 HC ***(refd)***

Jamilah Hj Ali & Anor v. Bank Simpanan Nasional & Anor [2019] CLJU 1905; [2019] 1 LNS 1905 HC ***(refd)***

Leong Kum Whay v. QBE Insurance (M) Sdn Bhd & Ors [2006] 1 CLJ 1 CA ***(refd)***

Newsholme Brothers v. Road Transport And General Insurance Company Limited [1929] 2 KB 356 ***(refd)***

Pacific & Orient Insurance Co Sdn Bhd v. R Kathirvelu [1992] 1 CLJ 348; [1992] 1 CLJ (Rep) 251 SC ***(refd)***

Provincial Insurance Co Ltd v. Yee Chee Swee [1984] 2 CLJ 12; [1984] 1 CLJ (Rep) 314 FC ***(refd)***

Raja Lob Sharuddin Raja Ahmad Terzali & Ors v. Sri Seltra Sdn Bhd [2008] 2 CLJ 284 CA ***(refd)***

Siva Prakash Ramasamy v. MCIS Insurance Bhd [2024] CLJU 1877 HC ***(refd)***

Tan Kang Hua v. Safety Insurance Co [1972] CLJU 149; [1972] 1 LNS 149 FC ***(refd)***

Thiagarajan S Rengasamy & Ors v. Sri Ganes Palaniapan [2024] 3 CLJ 607 HC ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 92, 93, 114(g)
Islamic Financial Services Act 2013, Schedule 9
Registration of Businesses Act 1956, s. 12
Road Transport Act 1987, s. 45G
Rules of Court 2012, O. 34 r. 2(2)(d)

For the plaintiff - Haizam Fitri Abdul Jalil; M/s Hafizul & Haizam
For the defendant - Tan Sixin & Asha Mohan; M/s Azim, Tunku Farik & Wong

Reported by Lina E

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

Introduction

[1] Here is a tale stranger than fiction, yet grimly real. Abdul Razak bin Noor Mohamad approaches an insurance agent with a most peculiar and specific question: "What if there is an accidental death from falling off a building?" The agent, perhaps thinking nothing of it, confirms he would be covered. Abdul Razak then takes out a policy on his life – a substantial policy worth millions. Twenty days later, he falls from the 17th floor of a building and dies. The agent herself testified that such a targeted question was rather unusual for someone buying a policy. Yet for all its dramatic peculiarity, this case does not turn on these extraordinary circumstances alone, but on the more prosaic – though no less vital – questions of what the contract says and what it means.

[2] The law of insurance, like all good law, must look beyond the sensational to the fundamental: what did the parties agree? On one side stands the adopted son – the plaintiff who trusted that this policy would provide security – clutching the certificate document and pointing to its plain terms which promise payment upon accidental death. On the other side stands the mighty insurance company, with its battalions of lawyers wielding the sword of misrepresentation, crying that the very foundation of the contract is rotten – that Abdul Razak overstated his income, fabricated his business, and deceived them about who would pay the premiums. They say the contract should be torn up as if it never existed, because it was built on falsehoods. The court must decide not whether Abdul Razak was a prophet of his own doom, but whether he told the truth when he sought coverage, and whether any alleged misrepresentations were material enough to justify the insurers walking away from their promises. These are the eternal questions of contract law – what did the words mean when written, and what do they mean when tested by the harsh realities of human tragedy?

Background Facts

[3] The deceased, Abdul Razak bin Noor Mohamad, applied for takaful coverage from the defendant through a proposal form dated 23 July 2020 ("the proposal form"). Based on the information provided in the proposal form, the defendant. Prudential BSN Takaful Sdn Bhd, issued a certificate known as "Sijil Takaful Keluarga PruBSN WarisanPlus No: 87265644" ("the certificate"). The plaintiff, Mohamad Habizan bin Mohaamd Yussof, was named as the nominee/beneficiary under the certificate. According to the plaintiff, he was the adopted son of the deceased.

[4] The certificate provided for a death benefit of RM1.5 million, with an additional RM1.5 million payable in the event of accidental death.

[5] Merely 20 days after the issuance of the certificate, on 17 August 2020, the deceased passed away after falling from the 17th floor of a building where he resided. The post-mortem report revealed the presence of alcohol (approximately 67 milligrams per 100 millilitres of blood) and a prescription drug called chloroquine in the deceased's system.

[6] Following the deceased's demise, the plaintiff, as nominee, made a claim under the certificate for a total of RM3 million (comprising both the death benefit and the accidental death benefit).

[7] On 14 July 2021, the defendant paid the plaintiff a sum of RM3,113.51 as khairat benefit under the certificate.

[8] However, by a letter dated 18 April 2022, the defendant declined the plaintiff's claim, asserting that the certificate was void *ab initio* due to misrepresentations and/or non-disclosure of material facts by the deceased in the proposal form. The defendant also raised alternative grounds for rejecting the claim, particularly in relation to the accidental death benefit.

Plaintiff's Case

[9] The plaintiff contends that the certificate is valid and enforceable. He argues that the deceased had fulfilled his duty of utmost good faith by providing all necessary information requested by the defendant. The plaintiff further submits that the defendant had examined and approved the proposal with full knowledge of the information provided, and therefore should be estopped from challenging the validity of the certificate.

[10] Regarding the alleged misrepresentations, the plaintiff argues that: (i) the annual income of RM450,000 was questioned by the defendant's underwriter during the application process, yet the application was approved, constituting waiver or estoppel; (ii) the business "Nesh Electrician" did exist, *albeit* unregistered with the Companies Commission

of Malaysia ('"CCM"); (iii) while the takaful contribution was paid from the plaintiff's bank account, it was the deceased who controlled the transaction due to technical difficulties with his own account; and (iv) there is no evidence that the deceased consumed alcohol at the time of applying for the certificate.

[11] The plaintiff also maintains that the deceased's death was accidental, as confirmed by the police and post-mortem reports. He contends that if the defendant wanted to prove otherwise, they should have produced expert witnesses to rebut the police and medical evidence.

Defendant's Case

[12] The defendant's position is that the certificate is *void ab initio* due to the deceased's non-disclosure and/or misrepresentation of material facts in the proposal form. Specifically, the defendant alleges that the deceased misrepresented: (i) his annual income, which he claimed was RM450,000; (ii) his employment status and company, declaring he was self-employed under "Nesh Electrician"; (iii) the source of the takaful contribution payment, which came from the plaintiff's account rather than the deceased's account as declared; and (iv) his consumption of alcohol, which he denied in the proposal form.

[13] Alternatively, the defendant argues that even if the certificate is valid, the claim for accidental death benefit is excluded under cls. 2.4.1(f), 2.4.1(h), and/or 2.4.1(c) of the certificate due to: (i) the presence of chloroquine in the deceased's system without evidence of a doctor's prescription; (ii) the presence of alcohol in the deceased's blood at levels exceeding the legal limit for driving; and/or (iii) circumstances suggesting the death may have been self-inflicted or resulted from reckless exposure to danger.

[14] Further, the defendant submits that the plaintiff failed to provide additional documents requested under cl. 12.7.1 of the certificate, which is a prerequisite for claim assessment.

Plaintiff's Submissions

[15] The plaintiff submitted that the certificate was marked under Part A of the common bundle of documents, meaning its authenticity and contents are admitted and cannot be challenged. He cited the cases of *Thiagarajan S Rengasamy & Ors v. Sri Ganes Palaniapan* [2024] 3 CLJ 607; [2024] 2 MLRH 469 and *Raja Lob Sharuddin Raja Ahmad Terzali & Ors v. Sri Seltra Sdn Bhd* [2008] 2 CLJ 284; [2007] 3 MLRA 224 to support his contention that the defendant is bound by the certificate's terms and estopped from challenging its validity.

[16] On the principle of utmost good faith, the plaintiff argued that this duty applies to both the proposer and the takaful operator. He relied on *Leong Kum Whay v. QBE Insurance (M) Sdn Bhd & Ors* [2006] 1 CLJ 1; [2005] 2 MLRA 380 to assert that the defendant had a reciprocal duty to act with utmost good faith, which included a duty to properly investigate the proposal details. The plaintiff contended that the defendant breached this duty by approving the proposal despite having doubts about the information provided.

[17] Regarding the alleged misrepresentations, the plaintiff submitted that: (i) the defendant's underwriter had seen and approved the RM450,000 annual income despite finding it questionable; (ii) "Nesh Electrician" existed as an unregistered business, which was confirmed by both the CCM witness and the plaintiff's testimony; (iii) the payment from the plaintiff's account was initiated by the deceased who had temporary control over it due to technical difficulties with his own bank; and (iv) there was no evidence of alcohol consumption at the time of application, and the deceased had shown honesty by asking whether he needed to declare being an ex-smoker.

[18] The plaintiff further submitted that the police and medical evidence clearly established accidental death, and the defendant had failed to produce any expert testimony to contradict this finding. He also argued that the requirements to provide additional documents after the claim was lodged were unreasonable and should have been requested at the application stage.

Defendant's Submissions

[19] The defendant submitted that while the certificate's inclusion in Part A acknowledges its authenticity and contents, this does not determine its enforceability, which is precisely the issue to be determined by the court. The defendant contended that proving any one of the four alleged material misrepresentations would justify avoiding the certificate from inception.

[20] On the annual income misrepresentation, the defendant pointed to the plaintiff's own admission during trial that the deceased did not earn RM450,000 annually, which was corroborated by Inland Revenue Board ("LHDN") records showing the deceased was not a registered taxpayer. For the "Nesh Electrician" issue, the defendant relied on CCM evidence confirming no such registered entity, and the absence of any documentary evidence of its existence despite the plaintiff claiming to have worked with the deceased.

[21] Regarding the payment source, the defendant highlighted bank statements showing the payment came from the plaintiff's account, contradicting the deceased's declaration that he would be the payor. On alcohol consumption, the defendant referred to the plaintiff's admission during cross-examination that the deceased consumed alcohol, and the post-mortem evidence of alcohol in his system.

[22] The defendant emphasised that the duty of utmost good faith primarily falls on the proposer to disclose material facts, and insurers are entitled to rely on the proposer's declarations without independent verification. For the alternative grounds, the defendant submitted that the presence of chloroquine without evidence of prescription, alcohol above legal driving limits, and suspicious circumstances surrounding the death triggered the exclusion clauses in the certificate.

[23] Lastly, the defendant argued that the police evidence should be given little weight as the police witness was not the investigating officer, did not have access to the investigation papers, and completed the questionnaire before receiving the post-mortem report.

Witnesses

[24] Five witnesses appeared for the plaintiff as follows:

(i) PW1 is Zamzarina binti Saad, a takaful agent. Her evidence primarily relates to the takaful application process and WhatsApp conversations with the deceased. She testified about the deceased's specific concerns regarding accidental death coverage, particularly asking whether coverage would apply "kalau jatuh dari bangunan" (if falling from a building). She explained that she facilitated the takaful application and payment process, where the deceased initially faced technical difficulties making payment and subsequently used the plaintiff's Maybank account as an alternative payment method. She also testified about being contacted by the plaintiff on the night of the deceased's death regarding the claim;

(ii) PW2 is Mohd Nur Azmee bin Basri, another takaful agent. His evidence appears limited based on the records, as he was a subpoenaed witness. There were no cross-examination questions for him from the defendant. His role appears to be supplementary to PW1's evidence regarding the agency relationship;

(iii) PW3 is Mohamad Habizan bin Mohamad Yussof, the plaintiff himself and nominated beneficiary under the certificate. His evidence centres on his relationship with the deceased (his adopted father), the circumstances of discovering the takaful policy after his adopted father's death, and the payment arrangements. He admitted during cross-examination that the takaful contribution payment of RM1,525 came from his own CIMB bank account, though he claimed his father had permission to use the account. His credibility was challenged when he initially claimed the deceased had no bank account, but was later shown evidence that the deceased had an account with Bank Simpanan Nasional;

(iv) PW4 is Dr Danial Aizat bin Rosli, the Government doctor who prepared the post-mortem report. His evidence relates to the cause of death and the finding of alcohol in the deceased's blood during the post-mortem examination. He testified that the alcohol detected was most likely due to consumption prior to death; and

(v) PW5 is Insp Mohd Hafiz bin Abdul Rahman, a Police Inspector who served as Head of Police Station at Balai Polis Jinjang. His evidence relates to a police questionnaire that he signed and stamped for the insurance company, which stated that the deceased's death was due to an accidental fall during servicing of an air-conditioning unit. However, he testified that he was not the investigating officer but only supervised the investigation process, with Sergeant Low being the actual investigating officer. He admitted that the police investigation was still ongoing and incomplete when he signed the questionnaire, the post-mortem report was not yet available at that time, his knowledge was limited to the period before his transfer from the station, and he did not have access to the complete investigation papers for the trial. He confirmed that his testimony was based solely on the answers provided in the police questionnaire he had signed.

[25] Five witnesses appeared for the defendant as follows:

(i) DW1 is Ab Razak bin Isa (subpoenaed), Senior Manager of the CCM. His evidence confirmed that there is no record of a company called "Nesh Electrician" as declared by the deceased in his proposal form;

(ii) DW2 is Chang Hui Chin (subpoenaed), Operations Officer at Maybank Islamic Shah Alam branch. Her evidence confirmed the bank records showing that the takaful contribution payment of RM1,250 came from the plaintiff's account *via* IBK Fund Transfer;

(iii) DW3 is Azuana binti Abdul Aziz (subpoenaed), officer of LHDN. Her evidence confirmed that the deceased was not a registered taxpayer and had no tax payment records, contradicting his declared annual income of RM450,000 in the proposal form;

(iv) DW4 is Iman binti Azmi, an underwriter with the defendant. Her evidence relates to the underwriting process and risk assessment. She testified that she was the highest authority for underwriting this particular case and that she conducted the risk assessment. She testified that had they had known about the non-disclosed facts at the proposal stage, they would not have issued the certificate. She confirmed that the approval was based on the information provided in the proposal form; and

(v) DW5 is Valarmathi a/p Ayasamy, Senior Manager of the Claims Department. Her evidence concerns the claims investigation process conducted after the deceased's death. She testified about discovering the

non-disclosed facts during the claim investigation and confirmed that these findings led to the claims department asking the underwriter to reassess what the decision would have been if the true facts had been known earlier.

Issues

[26] From the facts of the case, defences relied on by the defendant and the submissions of parties, the court frames the following main issues for deliberation which this court considers pivotal to the resolution of this case:

(i) whether the inclusion of the certificate in Part A of the common bundle of documents precludes the defendant from challenging its validity and enforceability on grounds of misrepresentation or non-disclosure of material facts;

(ii) whether the defendant breached its duty of utmost good faith by failing to investigate or verify the deceased's information before issuing the certificate;

(iii) whether the defendant should be estopped from challenging the validity of the certificate on grounds of misrepresentation regarding the deceased's annual income of RM450,000, given that the defendant's underwriter approved the proposal despite having concerns about the declared income;

(iv) whether the deceased's declaration of "Nesh Electrician" as his company name in the proposal form constituted a misrepresentation;

(v) whether the deceased misrepresented the source of the takaful contribution in the proposal form when he declared that he would be the payor, given that the documentary evidence shows the payment came from the plaintiff's bank account rather than the deceased's account;

(vi) whether the deceased misrepresented his alcohol consumption in the proposal form when he answered "no" to the question asking whether he "consume(s) beer, wine or other alcohol";

(vii) whether the misrepresentations regarding the deceased's annual income of RM450,000 and the existence of "Nesh Electrician" were material to the defendant's risk assessment;

(viii) whether the defendant was entitled to avoid the certificate *ab initio* and refuse all claims pursuant to para. 15(1) sch. 9 of the Islamic Financial Services Act 2013 ("IFSA") and the relevant clauses of the certificate, should the court find that the deceased made deliberate or reckless misrepresentations of material facts;

(ix) whether the defendant established that the deceased's death was "caused by" taking drugs or narcotics without prescription within the meaning of clause 2.4.1(f) of the certificate;

(x) whether the defendant established that the deceased's death was "caused by" alcohol and drugs intoxication within the meaning of clause 2.4.1(h) of the certificate;

(xi) whether the defendant established that the deceased's death was caused by "attempted suicide or self-inflicted injuries while sane or insane" within the meaning of clause 2.4.1(c) of the certificate;

(xii) whether the defendant's payment of the khairat benefit amounting to RM3,113.51 constitutes an admission that the certificate is valid and enforceable, thereby estopping the defendant from avoiding the certificate or declining the death claim;

(xiii) whether the plaintiff's failure to provide additional documents requested by the defendant under clause 12.7.1 of the certificate constituted a breach that would justify the defendant in not processing the claim; and

(xiv) whether adverse inference should be drawn against the defendant under s. 114(g) of the Evidence Act 1950 for failing to call Miss Sok Kwan as a witness and for not producing various documents including PwC investigation findings, AMLA screening results, standard operating procedures, and written underwriting decisions.

Analysis And Findings Of The Court

Status Of The Certificate As A Part A Document

[27] The plaintiff contends that the certificate's inclusion in Part A of the common bundle of documents means that its validity and enforceability cannot be challenged. The defendant argues that this merely acknowledges the document's authenticity but does not determine its enforceability.

[28] This argument requires careful consideration of both procedural and substantive aspects of law. Order 34 r. 2(2)(d) of the Rules of Court 2012 provides that "the contents of the bundle of documents referred to in subparagraph (c) shall be agreed on between all parties as far as possible and this bundle of agreed documents shall be filed by the plaintiff and marked as part A". The purpose of this rule is to streamline court proceedings by requiring parties to agree on the authenticity of documents to avoid unnecessary technical objections during trial.

[29] It is critical to distinguish between acknowledging a document's existence and authenticity (*ie*, that it is what it purports to be and its contents have not been altered) and acknowledging its legal effect or enforceability.

A The former is a matter of procedural convenience, while the latter involves substantive legal determinations that fall squarely within the court's jurisdiction.

[30] In *Thiagarajan S Rengasamy & Ors v. Sri Ganes Palaniapan*, the court observed that for documents in Part A, "the truth of its contents being
B conceded". However, this must be understood in its proper context. The "truth" referred to relates to the factual contents of the document – that the document contains what it purports to contain – not that the legal rights or obligations purportedly created by the document are valid and enforceable as a matter of law. Similar reasoning can be found in *Raja Lob Sharuddin Raja*
C *Ahmad Terzali & Ors v. Sri Seltra Sdn Bhd*, where the court held that "where the parties have agreed to its production and content, no party would be allowed to ask any question at all on that document". Again, these addresses evidential matters, not substantive legal determinations.

[31] This distinction is further supported by established contract law
D principles. Sections 92 and 93 of the Evidence Act 1950 prohibit oral evidence to contradict, vary, add to, or subtract from the terms of a written document or to supply defects in its language. However, these provisions do not preclude a court from determining whether a contract is void *ab initio* due to misrepresentation, as this goes to the very formation and
E enforceability of the contract rather than the interpretation of its terms.

[32] The Federal Court in *Provincial Insurance Co Ltd v. Yee Chee Swee* [1984] 2 CLJ 12; [1984] 1 CLJ (Rep) 314; [1984] 1 MLRA 227 recognised that while insurance policies are "subject to the same rules of construction as any other written contract", this pertains to interpretation of terms rather than
F questions of validity. When a contract's enforceability is challenged on grounds of misrepresentation or non-disclosure of material facts – especially in insurance or takaful contracts which are *uberrimae fidei* – the court must look beyond the document itself to determine if the contract was validly formed.

G **[33]** To accept the plaintiff's argument would lead to an absurd result whereby a party could shield a legally defective contract from judicial scrutiny merely by agreeing to include it in Part A. This would undermine the court's fundamental role in determining substantive legal rights and obligations according to established principles of law.

H **[34]** Therefore, while the certificate's existence and contents are not in dispute, its enforceability remains a triable issue, as correctly identified in the agreed issues before this court. The defendant is not precluded from challenging the certificate's validity on grounds of misrepresentation or non-
I disclosure of material facts.

Principle Of Utmost Good Faith (Uberrimae Fidei)

[35] The plaintiff submits that both parties are bound by the principle of utmost good faith, and argues that the defendant breached this duty by not investigating the deceased's information before issuing the certificate. Specifically, the plaintiff contends that the defendant failed to investigate and verify critical information including: (i) the deceased's declared annual income of RM450,000, despite the defendant's underwriter finding this amount questionable and the absence of any supporting documentation such as income tax records or bank statements; (ii) the legitimacy and details of the deceased's claimed business "Nesh Electrician", including its registration status and operational details; (iii) the actual source of takaful contribution payments, which came from the plaintiff's bank account rather than the deceased's account as declared; (iv) the deceased's medical history and lifestyle habits, particularly regarding alcohol consumption, where the defendant failed to conduct further medical examinations or request additional medical questionnaires despite red flags in the application; and (v) the deceased's employment status and business operations, where no verification was conducted with relevant authorities or through site visits.

[36] The plaintiff argues that the defendant's own underwriting witness (DW4) admitted that had proper investigation been conducted and accurate information obtained, the certificate would not have been issued in its current form, or potentially not issued at all, as the defendant would have requested further questionnaires, blood tests, and additional documentation before making any underwriting decision.

[37] The defendant maintains that the primary duty of disclosure falls on the proposer, and disputes having any reciprocal investigative obligation beyond relying on the proposer's declarations. The defendant's position is grounded in the principle of *uberrimae fidei* (utmost good faith), arguing that the proposer bears exclusive responsibility for honest disclosure as they possess knowledge of their personal circumstances, financial status, and medical history. The defendant contends that takaful operators have no duty to independently verify or investigate information provided by proposers, and their role is limited to relying on the truth and completeness of the proposer's answers and declarations.

[38] It is trite law that takaful contracts, like insurance contracts, are contracts of utmost good faith. This principle is codified in para. 5(2) & 5(8) sch. 9 of the IFSA, which provides that "(2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed takaful operator when answering any questions under subparagraph (1)" and "(8) subject to sub-paragraph (1) and (3), a consumer shall take reasonable care to disclose to the licensed takaful operator any matter, other than that in relation to subparagraph (1) or (3), that he knows to be relevant to the decision of the licensed takaful operator on whether to accept the risk or not and the rates and terms to be applied".

[39] While I acknowledge that takaful operators also have obligations of good faith, these do not extend to an obligation to independently verify all information provided by proposers. The law places the primary duty of disclosure on the proposer, who possesses exclusive knowledge of their personal circumstances. This fundamental principle was clearly articulated in *Newsholme Brothers v. Road Transport And General Insurance Company Limited* [1929] 2 KB 356 (English CA), where Scrutton LJ observed that "the contract of insurance requires the utmost good faith; the insurer knows nothing; the assured knows everything about the risk he wants to insure and he must disclose to the insurer every fact material to the risk". The court further emphasised that "the proposal is the proposal of the assured, the responsibility of declaring it true is his" and questioned "how can it be the duty of the company, through their directors or agents, to the assured, to see that the assured makes correct statements of fact, when he promises them they are true".

[40] This principle has been consistently applied in Malaysian jurisprudence dealing with takaful contracts. In *Jamilah Hj Ali & Anor v. Bank Simpanan Nasional & Anor* [2019] CLJU 1905; [2019] 1 LNS 1905; [2020] 7 MLJ 314, See Mee Chun J reaffirmed that "a contract of insurance including takaful is a contract of *uberrimae fidei* (of good faith) and any suppression or non disclosure of material facts by the proposer will entitle the insurance company to avoid the contract". The court emphasised that the duty lies squarely on the proposer, noting that the evidence showed the deceased "was suffering from and was being treated for diabetes and hypertension prior to her completion of the proposal form" and that "those facts were not disclosed, or were misrepresented" to the takaful operator. Significantly, the court found that the takaful operator's request for medical records after the deceased's death was merely "to support its defence of non-disclosure" rather than constituting any breach of duty on the operator's part.

[41] These authorities establish that takaful operators are entitled to rely on the declarations made by proposers in proposal forms, and are under no legal obligation to conduct independent verification of such declarations before issuing certificates. The burden of ensuring complete and accurate disclosure rests entirely with the proposer, who is in the best position to know all material facts relating to the risk.

[42] The recent case of *Siva Prakash Ramasamy v. MCIS Insurance Bhd* [2024] CLJU 1877; [2024] MLJU 2196, a judgment of this court, is particularly instructive. In that case, the deceased had failed to disclose a serious accident in 2015 which resulted in hospitalisation including admission to the ICU, despite being specifically asked in the proposal form whether he had suffered any physical injury or been admitted to hospital in the last five years. The deceased had answered "no" to these clear and straightforward questions.

Additionally, there were significant discrepancies in his declared income across multiple policies, with variations that could not be explained by normal income fluctuations. Despite the plaintiff's argument that the insurer should have cross-checked against previous policies or made further enquiries to uncover these matters, I held that "the duty of utmost good faith in insurance law requires a high standard of honesty and disclosure on the part of the insured ... The insured's duty to disclose and not misrepresent material facts is a strict one. It is not open to an insured to say that the insurer should have investigated further or uncovered the matters independently".

[43] I therefore find that the defendant was entitled to rely on the deceased's declarations in the proposal form, and had no legal obligation to verify these declarations before issuing the certificate. The defendant's subsequent discovery of misrepresentations after the deceased's passing does not constitute a breach of the duty of good faith on their part.

Misrepresentation Of Material Facts

Annual Income Of RM450,000

[44] The plaintiff contends that although the deceased's declared income of RM450,000 may have been questionable, the defendant's underwriter (SD4) approved the proposal despite her concerns, and therefore the defendant should be estopped from raising this issue. SD4 testified that declaring RM450,000 annual income without tax documentation was "not normal" and acknowledged finding "abnormalities from proposal form" during underwriting. Despite these concerns, she approved the proposal based on the principle that "we take the declaration as true" without requesting tax details or reporting to higher authority, stating she had no "suspicious" requiring escalation. The plaintiff argues that having approved the proposal despite these identified irregularities, the defendant should be estopped from subsequently challenging the income declaration.

[45] The defendant argues that the declaration was demonstrably false, as evidenced by the plaintiff's own admissions during cross-examination and independently corroborated by official LHDN records. During trial, the plaintiff explicitly admitted that the deceased did not earn RM450,000 annually, responding "tak ada" when directly questioned about this income level. This admission was substantiated by LHDN witness testimony confirming that the deceased was not a registered taxpayer and had no record of any tax payments, despite it being a mandatory legal requirement for persons earning more than RM3,000 monthly. The defendant contends that the underwriter's approval based on the "take declaration as true" principle does not immunise the contract from avoidance where material misrepresentation is subsequently established through objective evidence. The defendant emphasises that proving any one of the four alleged material

misrepresentations would justify avoiding the certificate *ab initio*, regardless of the underwriter's initial approval process, as the duty of utmost good faith fundamentally requires truthful disclosure from the proposer.

[46] I must first address what constitutes a misrepresentation in the context of takaful contracts. A misrepresentation occurs when a proposer provides information that is factually incorrect in response to a clear question posed by the takaful operator. The question in the proposal form at Item 1.18 (p. 160/bundle A) explicitly asked for the proposer's annual income, to which the deceased responded "RM450,000". This is not a matter of opinion, subjective assessment, or complex medical diagnosis; it is a straightforward factual question about the deceased's financial circumstances, something uniquely within his knowledge.

[47] The evidence on this issue is compelling. The plaintiff himself, who claimed to have worked with the deceased and to have been his adopted son, admitted during cross-examination that the deceased did not earn RM450,000 annually (notes of evidence dated 7 May 2024, pp. 88 to 89). When asked directly "saya nak cakap RM450,000 setahun pendapatannya? Tak ada", the plaintiff responded "tak ada", When further questioned to confirm "Saya sahkan, maksudnya si mati memang tak mempunyai pendapatan tahunan sebanyak RM450,000?", the plaintiff again confirmed "ya". This admission by the plaintiff, who was closely associated with the deceased, constitutes powerful evidence that the declared income was false.

[48] This admission is corroborated by the testimony of DW3 from LHDN, who confirmed that the deceased was not a registered taxpayer in Malaysia. While Malaysian tax law requires individuals with taxable income to register and file returns, the deceased had not done so despite claiming an annual income of RM450,000. Such a substantial income would unquestionably attract tax liability under Malaysian law. The absence of any tax registration strongly supports the conclusion that the deceased did not earn anywhere near the declared amount.

[49] The plaintiff has failed to produce any documentary evidence – such as bank statements, payment vouchers, business records, or client contracts – that might substantiate the deceased's claimed income, despite having ample opportunity to do so during trial. This is particularly significant because the plaintiff claimed to have worked closely with the deceased in business. In *Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors* [1993] CLJU 103; [1993] 1 LNS 103; [1994] 1 MLJ 740, the court established that "admissions are the strongest evidence possible". When these admissions are considered alongside the complete absence of documentary evidence supporting the declared income, the only reasonable conclusion is that the stated income of RM450,000 was fictitious. The plaintiff, having admitted the falsity of the declared income, cannot now contend that the court should disregard this admission or require further proof of the misrepresentation.

[50] The discrepancy between the declared income of RM450,000 and the deceased's actual financial circumstances are further underscored by evidence that he resided in a low-cost flat prior to his death, which would be incongruous with such a substantial income. This substantial gap between declaration and reality cannot be attributed to innocent error or misunderstanding.

[51] The plaintiff's argument that the underwriter approved the proposal despite having doubts about the declared income, and that this should somehow estop the defendant from raising the issue, fundamentally misunderstands the nature of the duty of utmost good faith in takaful contracts. This duty, which finds its roots in both Islamic financial principles and common law insurance doctrines, places the primary obligation of honest disclosure on the proposer, not on the takaful operator to verify each declaration.

[52] The Federal Court in *Tan Kang Hua v. Safety Insurance Co* [1972] CLJU 149; [1972] 1 LNS 149; [1973] 1 MLJ 6 recognised an exception where the insurer had "knowledge of the facts which they say were not communicated". However, this exception applies only where the insurer has actual knowledge of the true facts at the time of proposal. In the present case, there is no evidence that the defendant knew the deceased's declared income was false at the time the certificate was issued. That the underwriter may have harboured doubts is a far cry from having actual knowledge of the truth.

[53] Even in *Pacific & Orient Insurance Co Sdn Bhd v. R Kathirvelu* [1992] 1 CLJ 348; [1992] 1 CLJ (Rep) 251; [1992] 1 MLJU 266, where the Supreme Court limited the insurer's right to repudiate a policy, the court emphasised that the proposer's duty to answer honestly remains intact. The court there was concerned with questions requiring subjective opinion, such as whether one has "any disease", which even a skilled doctor might not answer with certainty. In contrast, a person's annual income is an objective fact within their definite knowledge.

[54] I find that the deceased's declaration of an annual income of RM450,000 was a clear and material misrepresentation of fact in the proposal form. The magnitude of this misrepresentation (declaring an income several times higher than his actual earnings) and its centrality to the takaful operator's risk assessment make it particularly significant.

Nesh Electrician

[55] The plaintiff argues that "Nesh Electrician" existed as an unregistered business, and the SSM witness confirmed that a business could exist without being registered. The defendant counters that there is no evidence of the business's existence beyond the plaintiff's bare assertion.

[56] This issue requires careful examination of what constitutes a misrepresentation regarding one's occupation and business entity in a takaful proposal. Items 1.14 and 1.19 of the proposal form (p. 160/Bundle A) explicitly asked the deceased to state his occupation and employer/company name. The deceased declared that he was "self-employed" as a "businessman – manual work" under the company name "Nesh Electrician". These declarations create a specific impression – that the deceased operated a business entity called "Nesh Electrician" through which he conducted his work as an electrician.

[57] The existence of "Nesh Electrician" as a functioning business entity is a question of fact that must be determined based on evidence. DW1, a Senior Manager from the CCM, testified unequivocally that there is no registered entity called "Nesh Electrician" in Malaysia (p. 33/bundle B1). This testimony establishes that the business was not formally registered as required by law. Section 12 of the Registration of Business Act 1956 makes it an offence punishable by fine and/or imprisonment to conduct business without proper registration.

[58] While DW1 acknowledged during cross-examination that a business could theoretically "exist" without being registered (in the sense that commercial activities could be conducted under an unregistered name), such operation would be unlawful. More importantly, the mere theoretical possibility of an unregistered business existing does not prove that "Nesh Electrician" actually did exist as a functioning business entity.

[59] The plaintiff, who claims to have worked with the deceased in this purported business, has conspicuously failed to produce any documentary evidence of its existence. Despite bearing the burden of proof, the plaintiff has not tendered a single business card, letterhead, invoice, receipt, quotation, contract, client list, advertisement, business bank account, supplier agreement, or any other business documentation that would typically exist for even the most informally operated business. Even for an unregistered business, one would expect to find some documentary trail of its commercial activities.

[60] The plaintiff's testimony regarding working with the deceased in "wiring business" is notably vague and lacks specific reference to "Nesh Electrician" as a business name or entity. At best, the plaintiff's testimony suggests that he and the deceased may have performed some electrical work together informally. This falls far short of establishing the existence of an actual business entity called "Nesh Electrician" as declared in the proposal form.

[61] It is instructive to consider the case of *Great Eastern Life Assurance (Malaysia) Bhd v. Poobalan Rajah* [2019] 10 CLJ 353, where the court held that the defendant's failure to adduce any evidence of his declared annual income

during trial, despite knowing that the plaintiff had pleaded inconsistencies in his declared income, would operate against him. The plaintiff has attempted to distinguish this case by arguing that in *Poobalan Rajah*, there were multiple factors do not present here: the defendant was charged with cheating SOCSO for the same disability claim, medical documents were alleged to be forged, the defendant made contradictory income declarations across multiple insurance policies, and he was the only witness in his own case. However, this attempt to distinguish fails to appreciate the core principle established in *Poobalan Rajah* – that a party bearing the burden of proof who fails to produce relevant evidence within their possession or control must suffer the adverse inference that such evidence would not support their case. The principle applies with equal force here. The plaintiff claims to have worked with the deceased in the purported "Nesh Electrician" business and to have been his adopted son, yet has produced not a single document evidencing the business's existence. The distinctive facts in *Poobalan Rajah* may have strengthened the inference drawn by the court in that case, but they do not limit the application of the basic evidentiary principle to the present circumstances. If anything, the complete absence of business documentation here, despite the plaintiff's claimed intimate knowledge of the deceased's affairs, makes the adverse inference equally compelling.

[62] Even in jurisdictions that recognise informal or unincorporated business entities, such as sole proprietorships or partnerships not registered with authorities, these entities would still generate documentary evidence of their existence through their commercial activities. The complete absence of such evidence in this case is telling.

[63] The deceased's declaration regarding "Nesh Electrician" cannot be dismissed as a mere technical error or misunderstanding. It represented to the defendant that he was engaged in a specific type of occupation through a specific business entity, which would have implications for risk assessment. An established business, even if unregistered, would suggest a level of financial stability and regular income that would affect the defendant's evaluation of the deceased's ability to maintain premium payments for a high-value takaful certificate.

[64] Based on the totality of evidence, or rather the significant lack thereof, I find that the deceased misrepresented his occupation and company in the proposal form. While he may have occasionally performed electrical work, the evidence does not support the existence of "Nesh Electrician" as a functioning business entity as represented to the defendant.

Source Of Takaful Contribution

[65] The plaintiff contends that while the payment came from his account, it was the deceased who controlled the transaction due to technical difficulties. The defendant relies on bank statements showing the payment originated from the plaintiff's account, contradicting the deceased's declaration that he would be the payor.

[66] The contemporaneous documentary evidence shows that the contribution payment came from the plaintiff's CIMB bank account (see p. 50/bundle B1). However, it is important to note that only one premium payment was made before the deceased's untimely passing, merely 20 days after the certificate was issued.

[67] The plaintiff provided a plausible explanation that the deceased encountered technical difficulties with his own payment method, as evidenced in the WhatsApp conversations at p. 9/encl. 69/exh. D1, which showed system errors when attempting payment. The deceased then resorted to using the plaintiff's account as a one-time solution to this technical problem.

[68] I find this explanation credible, particularly given the short timeframe in which the payment was made after SP1 provided her bank details. The fact that only a single payment was made before the deceased's passing does not establish a pattern or trend sufficient to conclude that the deceased misrepresented the source of funds. Had the deceased lived longer and made multiple payments from the plaintiff's account, this might have constituted a misrepresentation. However, on the evidence before me, I cannot conclusively find that the deceased misrepresented the source of the takaful contribution in the proposal form.

Alcohol Consumption

[69] The plaintiff argues there is no evidence the deceased consumed alcohol at the time of applying for the certificate, and the alcohol detected post-mortem could have been a one-time occurrence. The defendant points to the plaintiff's admission during cross-examination that the deceased consumed alcohol, and the post-mortem findings confirming alcohol in his system.

[70] The deceased answered "no" to question 4.1 in the proposal form asking whether he "consume(s) beer, wine or other alcohol" (p. 166/bundle A). During cross-examination, when asked "Sebenarnya si mati ada meminum alkohol. Setuju atau tak setuju?", the plaintiff affirmed (notes of evidence dated 7 May 2024, p. 90). The post-mortem report (pp. 3 to 9/bundle B1) also detected alcohol in the deceased's blood specimen.

[71] From a linguistic perspective, the term "consume" in question 4.1 is ambiguous. In ordinary usage, asking whether someone, "Do you consume alcohol?" typically implies habitual or regular consumption, not a single instance of drinking. The Malay phrase "ada meminum alkohol" used during cross-examination is equally ambiguous – it could refer to a single instance or habitual consumption. In the insurance context, the question is typically aimed at understanding lifestyle habits that may affect risk assessment, not isolated incidents.

[72] The evidence only establishes that the deceased had alcohol in his system at the time of death and that he may have consumed alcohol on at least one occasion. This does not necessarily contradict his answer in the proposal form if the question is understood to inquire about regular or habitual consumption. DW4 herself testified during cross-examination that the alcohol found during post-mortem does not mean the deceased consumed alcohol during the proposal stage or that it was more than a one-time event.

[73] Given these linguistic ambiguities and the lack of conclusive evidence about the deceased's alcohol consumption habits at the time of the proposal, I cannot find with sufficient certainty that the deceased misrepresented his alcohol consumption in the proposal form.

Materiality Of The Misrepresentations

[74] For a misrepresentation to invalidate a takaful contract, it must be material to the takaful operator's assessment of risk. The plaintiff argues that the defendant approved the certificate despite apparent anomalies in the information provided, suggesting these were not material. The defendant contends that each of the alleged misrepresentations was material to their risk assessment.

[75] Paragraph 7(8) sch. 9 IFSA provides that "unless the contrary is shown, it is to be presumed that the consumer knew that a matter about which the licensed takaful operator asked a clear and specific question was relevant to the licensed takaful operator". This creates a presumption that all matters asked by the takaful operator in its proposal form are relevant to the takaful operator, unless proven otherwise. In this case, the defendant specifically asked about annual income, occupation/company, payment source, and alcohol consumption in the proposal form, thus creating a presumption of materiality for all these matters.

[76] This presumption is supported by the testimony of DW4, the defendant's underwriter, who explained that these matters would have influenced the defendant's decision to issue the certificate and on what terms. In her witness statement, DW4 stated in Q&A 6 that "We would not have approved the certificate as it is because the actual employment status, annual income and source of takaful contribution payment would have influenced our decision especially as to how much coverage to be given, or it could raise possible anti-money laundering concerns, or we could potentially reject the entire proposal if we found out that any material information had been misrepresented to us". Similarly, in Q&A 7 regarding alcohol consumption, DW4 testified that "We would have requested for the deceased to complete further questionnaires and/or to take a blood test, before deciding whether to offer coverage or otherwise, and what terms of coverage would be offered, if any" and that "ultimately, PruBSN would not have issued the certificate

to the deceased as it is without further investigation and/or accurate information". This evidence was confirmed during cross-examination when DW4 agreed that "If different details are provided the defendant would not have approve" (notes of evidence dated 30 August 2024, p. 24).

[77] Significantly, the plaintiff himself admitted during cross-examination that these matters were material to the defendant's assessment. When asked by counsel: "Saya cadangkan Encik yang tadi maklumat pasal minum alcohol, pasal pendapatan tahunan, perniagaan dan identiti siapa yang bayar sumbangan takaful. Kesemua maklumat ini adalah maklumat penting bagi pihak insurans semasa dia mempertimbangkan sama ada nak bagi perlindungan takaful kepada seseorang ke tidak. Encik ada setuju dengan cadangan saya ke tidak?" the plaintiff responded, "Setuju" (notes of evidence dated 7 May 2024, pp. 91-92). When further asked: "Saya cadangkan En Habizan bahawa mana-mana 1 dari salah representasi yang tadi kita sebut tu 4 item tu, mana-mana 1 salah representasi tersebut akan memberikan hak kepada PruBSN untuk menolak tuntutan ataupun membatalkan polisi sejak permulaan. Encik setuju dengan cadangan saya?" the plaintiff again affirmed, "Ya" and "Setuju". This admission further strengthens the finding of materiality.

[78] Based on my findings above, I have determined that only two of the four alleged misrepresentations have been conclusively established: the misrepresentation regarding the deceased's annual income of RM450,000 and the misrepresentation regarding the existence of "Nesh Electrician". Nevertheless, these two misrepresentations alone were sufficiently material to the defendant's assessment of risk. The annual income directly impacts the affordability and sustainability of the takaful contributions, while the occupation and business details influence the risk profile assessment, both critical factors in the defendant's underwriting decision.

Deliberate Or Reckless Nature Of The Misrepresentations

[79] Under para. 7(4) sch. 9 IFSA, a misrepresentation is deliberate or reckless if the consumer knew it was untrue or misleading, or did not care whether it was untrue or misleading, and knew or did not care whether the matter was relevant to the takaful operator. It provides:

> A misrepresentation is deliberate or reckless if the consumer knew that:
>
> (a) it was untrue or misleading, or did not care whether or not it was untrue or misleading; and
>
> (b) the matter to which the misrepresentation related was relevant to the licensed takaful operator, or did not care whether or not it was relevant to the licensed takaful operator.

[80] The two established misrepresentations concerned basic personal information that would have been well within the deceased's knowledge: his annual income and his company/business. These are not matters on which the deceased could have been honestly mistaken. The deceased declared an annual income of RM450,000 when, by the plaintiff's own admission, he did not earn such an amount. Similarly, he claimed to be employed by "Nesh Electrician" when no evidence supports the existence of such an entity beyond the plaintiff's bare assertions.

[81] Given the clear nature of the questions in the proposal form and the "important notice" at the top of the form stating:

> Important Notice/Nota Penting:
>
> You need to fully understand that your answers and/or statements given in respect of the questions asked by Prudential BSN Takaful Berhad (PruBSN), and any other relevant documents completed by you in connection with the proposal and in any medical report or amendments (collectively referred to as "the information") are relevant to PruBSN in deciding whether to accept your proposal and the rates and terms to be applied.

[82] Emphasising the importance of providing true information, I find that the deceased either knew his answers regarding income and occupation were untrue or misleading, or did not care whether they were untrue or misleading. These two misrepresentations were therefore deliberate or reckless within the meaning of para. 7(4) sch. 9 IFSA.

Effect Of The Misrepresentations

[83] Paragraph 15(1) sch. 9 IFSA provides that "If a misrepresentation was deliberate or reckless, a licensed takaful operator may avoid the consumer takaful contract and refuse all claims". Additionally, para. 15(2) states that "Where the licensed takaful operator avoids a contract under subparagraph (1), the licensed takaful operator shall return such moneys due under such contract as may be specified by the bank". These provisions clearly establish the takaful operator's right to avoid the certificate and refuse all claims in cases of deliberate or reckless misrepresentation, subject to returning monies as specified by Bank Negara Malaysia.

[84] In this case, the certificate had been in force for approximately 20 days when the deceased passed away. Given my findings that the deceased made deliberate or reckless misrepresentations of material facts, I conclude that the defendant was entitled to avoid the certificate and refuse all claims pursuant to para. 15(1) sch. 9 IFSA.

[85] This conclusion is consistent with the certificate's own terms. Clause 12.1.4 of the certificate (at p. 133/bundle A) states that "In the event of a misrepresentation where your certificate has been in force for a period of two certificate years or less it shall be handled in accordance with sch. 9 of the IFSA whereby it may result in any of the following: (i) Your certificate being

avoided and all claims refused...” When read together with clauses 12.8.2 and 12.8.3, which address misstatement and misrepresentation of information, these provisions clearly allow for the avoidance of the certificate in the present circumstances.

Alternative Grounds: Exclusion Clauses

[86] Given my finding that the certificate is void *ab initio*, it is not strictly necessary to address the alternative grounds raised by the defendant. However, for completeness, I will briefly consider whether the accidental death benefit would have been payable had the certificate been valid.

Clause 2.4.1(f) – Taking Drugs Or Narcotics

[87] The plaintiff argues there is no evidence that the chloroquine detected in the deceased's system was taken without prescription. The defendant contends that the burden was on the plaintiff to show that the chloroquine was prescribed by a qualified doctor.

[88] Clause 2.4.1(f) excludes payment for accidental death that is directly or indirectly caused by “taking drugs or narcotic unless taken as prescribed by a qualified doctor or physician”. The operative phrase here is “caused by” – the mere presence of drugs or narcotics is insufficient; there must be a causal connection between the drug consumption and the death.

[89] The post-mortem report (p. 8/bundle B1) shows that chloroquine was detected in both the deceased's urine and blood specimens. PW4, the doctor who performed the post-mortem, confirmed that chloroquine is a prescription medication typically used to treat malaria and is not available over the counter (notes of evidence dated 8 May 2024, pp. 6 to 7, 20).

[90] While the plaintiff failed to provide evidence that the deceased had obtained a prescription for chloroquine, this alone is insufficient to trigger the exclusion. The defendant must establish not only that the drug was taken without prescription but also that it caused or contributed to the death, either directly or indirectly.

[91] Critically, PW4, the post-mortem doctor, did not testify that the presence of chloroquine caused or contributed to the deceased's fall. The post-mortem report identifies the cause of death as “multiple injuries due to fall from height” without attributing the fall to any influence of chloroquine. Further, no toxicology expert was called to testify about whether the amount of chloroquine detected was sufficient to impair the deceased's cognitive or motor functions.

[92] On a balance of probabilities, I find that the defendant has not established that the deceased's death was “caused by” taking drugs or narcotics without prescription. The mere presence of chloroquine in the deceased's system, without evidence of causation, is insufficient to trigger the exclusion under clause 2.4.1(f) of the certificate.

Clause 2.4.1(h) - Alcohol And Drugs Intoxication

[93] The plaintiff argues that the alcohol level detected in the deceased's blood was below the legal limit at the time of his death. The defendant contends that the level was above the legal driving limit according to the Road Transport Act 1987.

[94] Clause 2.4.1(h) excludes payment for accidental death that is directly or indirectly caused by "alcohol and drugs intoxication". As with clause 2.4.1(f), causation is a critical element of this exclusion.

[95] The post-mortem report detected approximately 67 milligrams of alcohol per 100 millilitres of blood in the deceased's system. The plaintiff correctly points out that at the time of the deceased's death (17 August 2020), the prescribed limit under s. 45G of the Road Transport Act 1987 was 80 milligrams per 100 millilitres of blood. The limit was only reduced to 50 milligrams by the Road Transport (Amendment) Act 2020, which came into force on 22 October 2020, after the deceased's death.

[96] Therefore, the deceased had alcohol in his system at levels below the legally prescribed limit for intoxication at the time of his death. Without evidence that this level of alcohol impaired his functioning, I cannot find that he was intoxicated within the meaning of clause 2.4.1(h).

[97] Furthermore, even if the combined presence of alcohol and chloroquine could potentially have impaired the deceased's judgment, the defendant has not adduced expert evidence establishing this causal connection. PW4, the post-mortem doctor, did not attribute the fall to any influence of alcohol or drugs, and no toxicological expert was called to testify about whether the detected substances could have caused intoxication or impairment.

[98] On balance, I find that the defendant has not established that the deceased's death was caused by alcohol and drugs intoxication. The mere presence of these substances in his system, without evidence of intoxication and causation, is insufficient to trigger the exclusion under clause 2.4.1(h) of the certificate.

Clause 2.4.1(c) - Attempted Suicide Or Self-Inflicted Injuries

[99] The plaintiff relies on the police and medical evidence that the death was accidental. The defendant points to suspicious circumstances suggesting the death may have been self-inflicted or resulted from reckless behaviour.

[100] Clause 2.4.1(c) excludes payment for accidental death that is directly or indirectly caused by "attempted suicide or self-inflicted injuries while sane or insane". This is a serious allegation requiring clear and convincing evidence.

[101] The defendant cites several circumstances it considers suspicious: (i) the certificate was obtained just 20 days before the deceased's death; (ii) the WhatsApp conversations between the deceased and PW1 (the agent) showed the deceased asking about coverage for falling from heights; (iii) the deceased obtained coverage for RM3 million in total; (iv) the deceased had alcohol and chloroquine in his system when he allegedly went to service an air-conditioning unit; and (v) the plaintiff was able to lodge a claim on the day of the deceased's death despite claiming to have no prior knowledge of the certificate.

[102] Upon careful consideration, I find these circumstances insufficient to establish attempted suicide or self-inflicted injuries. Many individuals purchase takaful coverage as part of prudent financial planning, and the timing, while arguably coincidental, is not definitive evidence of suicidal intent. The WhatsApp conversations, read in context, show a natural concern about coverage for various accident scenarios rather than premeditation. The amount of coverage, while substantial, was not inherently suspicious given the deceased's declared income (even if that declaration was false).

[103] More significantly, the official cause of death as determined by PW4, the post-mortem doctor, was "multiple injuries due to fall from height" without any suggestion of suicide. PW5, while not the investigating officer, confirmed that the police investigation classified the death as accidental.

[104] While the defendant correctly notes limitations in PW5's testimony, this does not transform absence of evidence into evidence of suicide or self-infliction. The burden of proving the application of this exclusion clause rests with the defendant, not with the plaintiff to disprove it.

[105] The defendant's suggestion that servicing an air-conditioning unit on the 17th floor without safety equipment constitutes "reckless behaviour" amounting to "self-inflicted injuries" stretches the ordinary meaning of these terms beyond their natural interpretation. "Self-inflicted injuries" typically refers to intentional self-harm, not reckless or negligent behaviour that results in accidental injury.

[106] Even if the deceased acted negligently in servicing his air-conditioner without proper safety precautions, this would not constitute "self-inflicted injuries" within the meaning of clause 2.4.1(c). To hold otherwise would potentially exclude coverage for a wide range of accidents involving some degree of contributory negligence, which would undermine the very purpose of accidental death coverage.

[107] On balance, I find that the defendant has not established that the deceased's death was caused by attempted suicide or self-inflicted injuries within the meaning of clause 2.4.1(c) of the certificate.

Payment Of khairat benefit

[108] The plaintiff argues that the defendant's payment of the khairat benefit amounting to RM3,113.51 constitutes an admission that the certificate is valid and enforceable. The defendant contends that the khairat benefit was paid on a without prejudice basis pending investigation.

[109] Clause 7.3.2 of the certificate clearly states that the khairat benefit "will be payable upfront as long as the claimant submits the death certificate and/or other evidence satisfactory to us without the need to process the death claim first. The admittance of this benefit does not guarantee that the death benefit will be payable".

[110] Furthermore, the plaintiff himself admitted during cross-examination that he understood the khairat benefit payment did not automatically mean the rest of the claim would be paid (notes of evidence dated 7 May 2024, pp. 97 to 98).

[111] I therefore find that the payment of the khairat benefit does not estop the defendant from avoiding the certificate or declining the death claim.

Failure To Submit Required Documents

[112] The defendant argues that the plaintiff failed to provide additional documents requested under clause 12.7.1 of the certificate. The plaintiff contends that the documents requested were unreasonable and should have been asked for at the application stage.

[113] Clause 12.7.1 of the certificate provides that "before we pay any claim under this certificate, we may request for additional document(s) including legal documents to process and approve the claim".

[114] The evidence shows that the defendant made several requests for additional documents to support the claim (see the defendant's letters dated 2 September 2020, 18 October 2020, and 17 November 2020 at pp. 34 to 35, 39 to 42/bundle B1). The plaintiff failed to provide these documents.

[115] While I accept that the plaintiff may not have had access to all the requested documents, particularly given that he was not the deceased's heir but merely a nominee under the certificate, his failure to make reasonable efforts to obtain and provide the requested documents constitutes a breach of clause 12.7.1.

[116] Therefore, even if the certificate had been valid and the claim had not been excluded, the defendant would have been justified in not processing the claim due to the plaintiff's failure to comply with clause 12.7.1.

Adverse Inference Under Section 114(g) Evidence Act 1950

[117] The plaintiff submitted that adverse inference should be drawn against the defendant under s. 114(g) of the Evidence Act 1950 for multiple failures to produce evidence. First, regarding Ms Sok Kwan, the plaintiff argued that

DW5 testified that "underwriting review and approval done by Ms Sok Kwan", directly contradicting DW4's evidence that she was the highest authority who approved the certificate. The plaintiff contended this contradiction was "glaring" and raised questions about DW4's credibility and authority.

[118] Second, regarding documentary evidence, the plaintiff argued that the defendant failed to produce: (i) PricewaterhouseCoopers ("PwC') investigation findings, despite PW1 testifying she was investigated by PwC; (ii) Anti-Money Laundering ("AMLA") screening results, despite DW4 mentioning such screening was conducted; (iii) standard operating Procedures ("SOP') for the Underwriter Department, despite DW4 referencing such procedures; and (iv) written underwriting decisions, despite DW5 confirming that decisions were "recorded in the system" with reasons stated. The plaintiff submitted that all this evidence, if produced, would be unfavourable to the defendant and demonstrated a pattern of withholding material evidence.

[119] The defendant submitted that the plaintiff's attempt to draw adverse inference was "futile" and "inexplicable". Regarding Miss Sok Kwan, the defendant argued that DW4 testified on oath that she was the highest authority for the underwriting at the material time and was not challenged on her authority, making Ms Sok Kwan's testimony immaterial. The defendant distinguished between underwriting and claims processes, arguing that the plaintiff was conflating two different stages handled by separate departments.

[120] Regarding the missing documents, the defendant contended that the plaintiff failed to establish that such documents existed in writing or demonstrate their materiality. The defendant argued that: (i) internal SOP would not constitute an actionable cause of action even if breached; (ii) DW4's oral testimony provided the best evidence regarding underwriting decisions; (iii) PwC findings would be mere hearsay given that PW1 testified in person; and (iv) the underwriter's decision manifested in the certificate's issuance. The defendant cited *Munusamy Vengadasalam v. PP* [1987] 1 MLJ 492 (SC) to support the proposition that s. 114(g) should not be "carried too far outside its limit."

[121] The court must establish the proper scope and application of s. 114(g) Evidence Act 1950. As emphasised by Mohamed Azmi SCJ in *Munusamy Vengadasalam*, "It is essential to appreciate the scope of s. 114(g) lest it be carried too far outside its limit. Adverse inference under that illustration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence. It may be drawn from withholding not just any document, but material document by a party in his possession, or for non production of not just any witness but an important

and material witness to the case". This principle requires the court to distinguish between legitimate exercise of discretion in case presentation and improper suppression of material evidence.

[122] The plaintiff has fundamentally failed to meet the threshold requirements for drawing adverse inference. The *Munusamy Vengadasalam* principle requires the plaintiff to first establish that the complained evidence exists and its material to the issues. The plaintiff has merely speculated about the existence of formal documentation based on testimony that certain processes were conducted, without demonstrating that written records were created, maintained, or in the defendant's possession. This falls short of the standard required, which demands actual withholding of existing material evidence rather than failure to obtain or create evidence.

[123] Regarding Ms Sok Kwan specifically, the court finds that her testimony would not be material to the substantive issues. DW4 (Iman binti Azmi) provided clear and unequivocal testimony that she was the highest authority for this particular underwriting decision, stating: "This case is within my authority ... Yes, for this case ... No, we don't need peer review". This evidence was not challenged during cross-examination, and DW4's authority was not disputed by the plaintiff. The court accepts the defendant's submission that there is a critical distinction between the underwriting process (handled at the proposal stage) and the claims assessment process (handled post-death). DW4 was the underwriting authority who made the decision to issue the certificate, while DW5 was a claims manager reviewing the matter retrospectively. Any reference by DW5 to Ms Sok Kwan's involvement does not necessarily contradict DW4's evidence about her own decision-making authority, as these witnesses were addressing different stages and departmental processes.

[124] On the PwC investigation findings, the evidence shows that PW1 was interviewed by PwC, but the court finds that the defendant's failure to produce PwC's findings does not warrant adverse inference. As correctly submitted by the defendant, PW1 testified in person at trial, providing the best evidence regarding the matters she discussed with PwC. Any written findings would constitute hearsay evidence of lesser probative value. More importantly, since PW1 was the plaintiff's own witness, the plaintiff had full opportunity during examination-in-chief to elicit any relevant information from PW1 about her interactions with PwC investigators. The fact that the plaintiff did not seek to adduce evidence of any discrepancies between PW1's knowledge and what she told PwC suggests that the PwC findings would not materially assist the plaintiff's case or contradict the evidence already before the court.

[125] In respect of the AMLA screening results, DW4 testified that AMLA screening was conducted and concluded that "for this case we didn't see any money laundering issue" and it "didn't trigger AMLA". The absence of

formal documentation is immaterial since the substantive result – no money laundering concerns identified – was disclosed through testimony. The proposal was processed normally without requiring compliance department referral, supporting rather than undermining the defendant's position that proper procedures were followed.

[126] On the SOPs, while DW4 acknowledged the existence of SOPs, the court finds their absence immaterial to the substantive legal issues. The defendant correctly submits that even if adherence to internal SOPs were proven lacking, this would not constitute an actionable cause of action for the plaintiff. Internal procedures are matters of corporate governance rather than legal obligations to policyholders. DW4's detailed testimony about the actual underwriting process provides sufficient evidence, making formal SOP documentation cumulative rather than essential.

[127] Regarding the written underwriting decisions, though DW5 mentioned that decisions are "recorded in the system", the court finds that the defendant's approval decision is conclusively evidenced by the certificate's issuance itself. The plaintiff has not disputed the certificate was issued nor suggested any written decision would contradict DW4's sworn testimony. The absence of written records creates no evidential gap warranting adverse inference.

[128] The plaintiff has failed to demonstrate how any missing evidence would be material to the central legal issues: whether the deceased made material misrepresentations and whether those misrepresentations induced the certificate's issuance. The core facts – certificate issuance, proposal form representations, and subsequent investigation revelations – are established through other evidence. None of the missing evidence would alter the legal analysis of misrepresentation materiality or inducement.

[129] The evidence does not suggest deliberate suppression of existing documents. Rather, the defendant chose not to adduce internal documentation that was either cumulative of oral testimony (PwC findings, written decisions) or irrelevant to legal issues (SOP, AMLA details). This falls within legitimate case presentation discretion rather than improper withholding under the *Munusamy Vengadasalam* principle.

[130] The court finds compelling grounds for adverse inference against the plaintiff, who failed to produce documentation evidencing the deceased's claimed business activities or income despite claiming intimate knowledge of his affairs. This mirrors the principle in *Great Eastern Life Assurance (Malaysia) Bhd v. Poobalan Rajah*, where failure to adduce evidence of declared income despite knowing inconsistencies had been pleaded operated against the defendant. The plaintiff's complete absence of business documentation, despite claimed partnership with the deceased, makes adverse inference equally compelling here.

[131] For these reasons, the court finds that the plaintiff's arguments for adverse inference regarding both Ms Sok Kwan and the missing documents lack merit. The plaintiff has failed to establish that this evidence would be material to resolving the legal issues, has not demonstrated that the contents would differ from oral testimony provided, and has not shown improper withholding rather than legitimate case presentation choices. The court is satisfied that the evidence before it sufficiently determines the substantive issues without requiring adverse inferences regarding the complained evidence.

Conclusion And Order

[132] In conclusion, I find that:

(i) the deceased made deliberate or reckless misrepresentations of material facts in the proposal form, specifically regarding his annual income and occupation/company;

(ii) these two misrepresentations, though fewer than alleged by the defendant, were sufficiently material to entitle the defendant to avoid the certificate *ab initio* under para. 15(1) sch. 9 IFSA and clauses 12.1.4, 12.8.2, and 12.8.3 of the certificate;

(iii) the defendant has not established that the deceased misrepresented the source of the takaful contribution or his alcohol consumption;

(iv) the defendant has not proven that any of the exclusion clauses under 2.4.1(f), 2.4.1(h), or 2.4.1(c) of the certificate apply in this case; and

(v) the plaintiff's failure to provide some requested documents is understandable given his status as merely a nominee rather than the deceased's heir, and does not by itself justify rejection of the claim.

[133] Although the defendant did not establish all elements of its defence, the two material misrepresentations regarding annual income and business entity are sufficient grounds to void the certificate *ab initio*. The duty of utmost good faith is fundamental to takaful contracts, and the deceased's misrepresentations on these two material points constituted a breach of this duty.

[134] For these reasons, the plaintiff's claim is dismissed with costs of RM25,000 to the defendant.